

CHRISTOPHER M. MACROGLOU.
Serial No.: 09/190,788

7

REMARKS

Claims 1, 2, 13, 15, 16, and 19-22 are currently amended. New claims 27-31 are added. Claims 3-12 were previously canceled without prejudice. Claims 25 and 26 are canceled without prejudice in this amendment. Claims 1, 2 and 13-24 and 27-31 remain before the Examiner for reconsideration.

In the Office Action dated May 4, 2004, the Examiner rejected claims 1, 2, and 13-24 under 35 U.S.C. Section 103(a) "as being unpatentable over Harkness in view of Carney." Specifically, the examiner asserted that:

Harkness discloses a device support member worn around a person's head and an attached laser light (abstract) generating a linear alignment beam of light visible to the person to provide an alignment of the person's body when in position to perform the task as stated in claims 1 and 15 (figs. 2 and 3). Harkness also discloses a cylindrical lens and positions the lens to direct the beam of light as in claim 2 (fig 4 and col 3, lines 20-26). Regarding claims 13 and 16, figures 2 and 3 show a band worn around a person's head. Regarding claims 14, 17 and 18, the beam is visible on the ground (fig 3). Regarding claims 19 and 20, Harkness does not disclose the device around the chest or hips of the user. Harkness does disclose the device as being interchangeable among different items. However, moving the device from one body part to another is a method of use, which is not relevant to the structure of the device. Harkness discloses a spot of light on the ground and does not disclose a line of light. However, Carney teaches a line of light alignment. Regarding claim 21, Harkness discloses a device support member worn around a person's head and an attached laser light (abstract) generating a linear alignment beam of light visible to the person to provide an alignment of the person's body when in position to perform a golf stroke, (see figure 3). Providing an indication of alignment can be seen in figure 3 of Harkness, wherein the golfer is preparing for the golf stroke. Carney teaches a line of light alignment. Regarding claim 22, figure 3 displays the device on the head of the golfer and the beam of light running parallel to the golfer's eyes. Regarding claims 23 and 24, figure 3 displays the golfer preparing for a stroke and the surface wherein the beam of light meets is the ground. One skilled in the art would have modified the invention of Harkness with Carney by changing the spot of light to a line of light to provide a more accurate alignment means for the user.

CHRISTOPHER M. MACROGLOU.
Serial No.: 09/190,788

8

With respect to the arguments set forth in the Amendment filed February 13, 2004, the Examiner asserted that:

Applicant argues the Harkness reference does not disclose the claimed invention. Harkness discloses a device comprising a support member worn on a person's head and a light source comprising a laser. Harkness further discloses a spot on the ground produced by the laser beam but does not disclose a line of light. Carney teaches a line of light produced by a laser beam. Applicant further argues the Harkness reference is used to prevent movement and the present invention is used to achieve the proper alignment. However, the method of using the device is not relevant to apparatus. The structural limitations as claimed are disclosed by Harkness in view of Carney. Please note it is apparent from figure 3 of Harkness that the golfer is preparing for the proper stance, i.e., alignment. Applicant also argues one would not modify the line a spot of light with a line of light. As shown in the rejection above, Harkness teaches the structural limitations claimed by applicant, except for the line of light produced by the laser. Harkness discloses a spot of light and the secondary reference, Carney, teaches a golfing device with a line of light. Since both references disclose golfing devices the combination of references is proper.

Applicants respectfully traverse the Examiner's rejection.

Harkness does not address the problem of determining alignment of any portion of the body the user thereof, and the device of Harkness does not provide any information to the user thereof regarding the alignment of any portion of the person's body. Harkness discloses the use of a light spot projected onto the ground to aid a golfer in observing head movement during a golf swing and not to provide an alignment of the person's body when in position to perform the task. The above scope of the invention of Harkness is well set forth in Harkness and summarized succinctly in the abstract of Harkness as follows:

A method for using a light spot projecting aid to observe head movements during a golf swing and to provide a golfer with an explanation (i.e., cause) of the effect manifested as the light spot being moved.

CHRISTOPHER M. MACROGLOU.
Serial No.: 09/190,788

9

Unlike the present invention, Harkness provides no information to the user thereof of a plane transversing the person's eyes or any other portion of the person's body.

The Examiner recognizes that Harkness discloses a spot of light on the ground and does not disclose a generally linear, alignment beam, extending projection or line of light. Nonetheless, the Examiner asserts that one skilled in the art would modify the invention of Harkness in light of the disclosure of Carney by changing the spot of light to a line of light. However, neither Harkness nor Carney is not designed to or operable to provide information on alignment of the user's body. As neither Harkness nor Carney are designed to provide feedback to the user regarding the actual alignment of the user's body, and neither Harkness nor Carney even address the problem of providing such feedback, there is absolutely no motivation for one skilled in the art to combine the teaching of Harkness with the teaching of Carney to arrive at the present invention. See, for example, Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (P.O. Bd. Appl. 1984) ("The prior art must provide a motivation or reason for a worker in the art without the benefit of appellant's specification to make the necessary changes in the reference device."); Schenk v. Norton, 218 USPQ 698, 702 (Fed. Cir. 1983) ("Modification unwarranted by the disclosure of a reference is improper."); Ex Parte Acosta, 211 USPQ 636, 637 (P.O. Bd. Appls. 1980) (Examiner's combination of two references is improper where there is no basis in the record from which it can reasonably be inferred that one skilled in the art would have been led or motivated to modify the primary reference in the manner proposed by the Examiner.).

Applicant respectfully asserts that the Examiner is incorrect in asserting that the method of using the devices of the references is not relevant to the apparatus and that the structural limitations as claimed in the present invention are disclosed by Harkness in view of Carney. Initially, the method of use and the stated use/purpose of a device disclosed in a reference is certainly relevant to the combination of that reference with a second reference so as to modify the device of the first reference. In that regard, it is not obvious to one skilled in the art to substantially modify the device of the Harkness to achieve another, substantially different method, use or purpose. As body alignment is

CHRISTOPHER M. MACROGLOU.
Serial No.: 09/190,788

10

irrelevant to the stated sole purpose of the device of Harkness (that is, the detection of motion), one skilled in the art would not attempt to modify that device as suggested by the Examiner to provide information as to alignment. Alignment of the golfer's body as illustrated in Figure 3 of Harkness is always performed before a golf stroke, but the device of Harkness provides no information to the user thereof of such alignment. Contrary to the Examiner's assertions, Figure 3 of Harkness does not disclose an extending projection or line of light on a surface visible to the golfer which is parallel to the eyes of the golfer or any other portion of the golfer. As admitted by the Examiner, Harkness discloses only the projection of a spot or point of light.

Moreover, Carney does not disclose or suggest a means of providing feedback to a person of the actual alignment of any portion of that person's body. Carney merely discloses the propagation of a line of light on the ground to indicate the target line to a particular target such as a simulated golf hole. Although Carney discloses a target line of light to which a person may attempt to align a portion of the person's body, the person is provided with no indication/feedback of how that portion of the person's body is actually aligned by the device of Carney.

In any event, however, even if one were to mechanically combine the source of a line of light disclosed in Carney with the device of Harkness (for which combination there is no motivation in the disclosure of Harkness, Carney or any combination thereof), one would not arrive at the present invention. As clear from the disclosure of Harkness and as demonstrated to the Examiner in the interview of March 4, 2002, the spot of light of Harkness does not even provide information as to the alignment of the cap on the person's head (which need not be aligned with the orientation of the person's head) as the device need not be placed on the cap to project the light in any specific orientation. Converting the spot of light projected by the device of Harkness to a line of light would not provide a line of light generally parallel to the alignment line passing transversely through any portion of the person's body (for example, the eyes, chest or hips) as claimed in the present invention. Neither Harkness nor Carney discloses or suggests a support or attachment for maintaining a mechanism adapted to project a

CHRISTOPHER M. MACROGLOU.
Serial No.: 09/190,788

11

generally linearly extending projection of light or a line of light onto surface in a desired orientation on a portion of the person's body so that the projection of light or line light is generally parallel to the alignment of that portion of the person's body.

Even though, as recognized by the Examiner, both Harkness and Carney disclose devices designed for use in the golf industry, absent some suggestion to one of ordinary skill in Harkness or Carney of the desirability of the claimed combination, one of ordinary skill in the art – without the benefit of Applicant's specification - would not combine those disclosures, and then substantially modify the combination, to arrive at the present invention. Applicant is the first to use an alignment line of light to provide real time feedback to a person of the actual real time alignment of a line passing transversely through a portion of the person's body. To provide such alignment information to the user of the device of the present invention is a substantial improvement in the art of, for example, golf instruction.

The Examiner further indicated that claims 25 and 26 are objected to "as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims". Applicants have canceled claims 25 and 26 without prejudice. Subject matter similar to that presented in claims 25 and 26 is now presented in claims 29-31.

CHRISTOPHER M. MACROGLOU.
Serial No.: 09/190,788

12

In view of the above amendments and remarks, the Applicants respectfully requests that the Examiner withdraw the rejection of the claims, indicate the allowability of the claims, and arrange for an official Notice of Allowance to be issued in due course.

Respectfully submitted,

CHRISTOPHER M. MACROGLOU.

By 

Henry E. Bartony, Jr., Esq.

Reg. No. 34,772

Bartony & Hare, LLP

Law & Finance Building

Suite 1801

429 Fourth Avenue

Pittsburgh, Pennsylvania 15219

412-338-8632 (telephone)

412-338-6611 (fax)

Attorney for Applicant